IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES A. JONES,

Plaintiff,

v.

OPINION AND ORDER

10-cv-766-slc

JO ANN SKALSKI, JAMES GRADY,
KESHA A. MARSON, MS. HINTZ,
MS. REMMERS, MR. COSBOB,
MR. LAWLER, MS. JOHNSON,
MR. MULVEY and JOHN DOE,

Defendants.

- -

Pro se plaintiff James Jones was a participant in a "challenge incarceration program" under Wis. Stat. § 302.045, which authorizes early release from prison after successful completion of the program, often called "boot camp." E.g., State v. Schladweiler, 2009 WI App 177, 322 Wis. 2d 642, 777 N.W.2d 114; State v. Steele, 2001 WI App 160, 246 Wis. 2d 744, 632 N.W.2d 112. In this lawsuit under 42 U.S.C. § 1983, plaintiff contends that defendants prevented his release for several months in violation of the Constitution by refusing to inform the sentencing court that he had completed the program, as required by § 302.045(3m). (Plaintiff was ultimately released in May 2009, but he has since been

reincarcerated for reasons he does not explain.)

Plaintiff has made an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1). Because plaintiff is a prisoner, I must screen his complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. § 1915A.

Generally, a prisoner may not challenge the validity of his confinement in a proceeding under § 1983. Heck v. Humphrey, 512 U.S. 477 (1994); Preiser v. Rodriguez, 411 U.S. 475, 488-90 (1973). However, I have assumed in other cases that relief under § 1983 may be available when a habeas petition is now moot and the prisoner did not have an adequate opportunity to challenge his confinement while he was still incarcerated. E.g., Virsnieks v. Wisconsin Dept. of Health and Familiy Services, 2008 WL 2704578, *2 (W.D. Wis. 2008) (citing Spencer v. Kemna, 523 U.S. 1, 21 (1998) (Ginsburg, J., concurring)). For the purpose of this screening order, I will assume that plaintiff can no longer obtain relief under § 2254 and that he did not have sufficient time to file a habeas petition while confined.

Having reviewed plaintiff's complaint, I conclude that he may proceed on a claim that defendants violated his rights under the Eighth Amendment because they continued to detain him despite knowledge that state law required his release. Defendants remain free to argue at later stages of the case that plaintiff's claim is not cognizable under § 1983 or that he is misinterpreting the requirements of § 302.045.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, plaintiff fairly alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff James Jones is incarcerated at the New Lisbon Correctional Institution. Before May 27, 2009, he was incarcerated at the St. Croix Correctional Center in New Richmond, Wisconsin. On May 14, 2008, plaintiff enrolled in a "challenge incarceration program" under Wis. Stat. § 302.045 to obtain early release; he completed the program on November 21, 2008. Staff sent a form to the sentencing court in accordance with § 302.045(3m) so that plaintiff could be released to extended supervision.

At the graduation ceremony for the program, defendant Kesha Marson, plaintiff's social worker, gave plaintiff a conduct report for disobeying an order, which led to his placement in "quitter status." This status "serves as the Program's disciplinary separation while an investigation is being conducted into an inmate's actions."

A few days later defendant James Grady, the security director, told plaintiff that he could not be released from prison because his form was sent to the wrong judge. Plaintiff's "treatment team" (defendants Grady, Marson, Hintz and Remmers) and the "superintendent committee" (defendants Cosbob, Lawler, Johnson and Mulvey) reviewed plaintiff's case in

light of his new conduct report. After meeting with plaintiff, the superintendent committee recommended a 90-day extension of the program; the treatment team recommended termination from the program. On December 12, defendant Jo Ann Skalski, the superintendent, told plaintiff that she would not send his form to the proper sentencing court unless he agreed to a 28-day extension of the program. When plaintiff refused, Skalski terminated him from the program. Defendant John Doe, the warden, was involved in this decision.

Plaintiff filed an administrative grievance, which led to a reversal of Skalski's decision. On May 14, 2009, Skalski sent a letter and form to the sentencing court, acknowledging plaintiff's completion of the program. The sentencing court signed the release order on May 21, 2009; plaintiff was released on May 27, 2009.

OPINION

The crux of plaintiff's complaint is that each of the defendants violated his rights by refusing to inform the sentencing court that he had finished the boot camp program. Plaintiff asserts claims for "malicious prosecution," "false imprisonment" and "due process," but none of these theories is viable.

The Court of Appeals for the Seventh Circuit has declined to recognize a constitutional claim for malicious prosecution. Avila v. Pappas, 591 F.3d 552, 553-54 (7th

Cir. 2010); Parish v. City of Chicago, 594 F.3d 551, 552-54 (7th Cir. 2009). Even if such a claim existed, plaintiff has not alleged that any of the defendants is responsible for bringing a criminal complaint against him, which is generally the context for a malicious prosecution claim.

A prisoner's right to due process is implicated when prison officials extend the duration of a prisoner's confinement, Sandin v. Conner, 515 U.S. 472, 484 (1995), but due process is about providing an opportunity to be heard before one's liberty is restricted, not about the correctness of the decision. Lagerstrom v. Kingston, 463 F.3d 621, 624-25 (7th Cir. 2006). Plaintiff does not state a claim under the due process clause because he concedes that he met with defendants before they made their decision and he does not identify any additional procedures to which he was entitled. Taake v. County of Monroe, 530 F.3d 538, 543 (7th Cir. 2008) (no due process claim if plaintiff does not identify additional process he was due).

Finally, false imprisonment is a claim under the Fourth Amendment that applies only when a person has been arrested and detained without legal process. Wallace v. Kato, 549 U.S. 384 (2007). It does not apply to situations that occur after a person's conviction.

Although plaintiff does not identify a valid legal theory, that is not necessarily fatal to his complaint. "[T]he complaint need not identify a legal theory, and specifying an incorrect theory is not fatal." Bartholet v. Reishauer A.G. (Zurich), 953 F.2d 1073, 1078

(7th Cir. 1992). In screening a prisoner's complaint under § 1915, the court must determine whether the plaintiff states a claim under *any* legal theory.

I conclude that plaintiff has a potential claim that defendants violated his right to be free from cruel and unusual punishment under the Eighth Amendment. A prison official may violate the Eighth Amendment if he or she knowingly detains a prisoner "beyond the release date dictated by state law." Campbell v. Peters, 256 F.3d 695, 700 (7th Cir. 2001); see also Russell v. Lazar, 300 F. Supp. 2d 716, 720 (E.D. Wis. 2004) ("Incarcerating a prisoner beyond the termination of his sentence without penological justification violates the Eighth Amendment prohibition of cruel and unusual punishment when it is the product of deliberate indifference."). In this case, plaintiff alleges that defendants knew he was entitled to release under Wis. Stat. § 302.045(3m), but they refused to process the necessary paperwork. Plaintiff's reading of the statute is incorrect, but in the absence of any controlling case law on an official's duties under the statute, I believe that it would be premature to dismiss the complaint on that ground. Accordingly, I will allow plaintiff to proceed on a claim under the Eighth Amendment.

The only other question is whether plaintiff has alleged that each of the defendants was personally involved in the alleged constitutional violation. Morfin v. City of East Chicago, 349 F.3d 989, 1001 (7th Cir. 2003) (no liability under § 1983 unless defendant was personally involved in constitutional violation). Plaintiff's allegations suggest that

defendant Skalski was the primary decision maker in delaying plaintiff's release, but it is reasonable to infer at this stage that the other defendants were personally involved as well because they gave Skalski input. Jones v. City of Chicago, 856 F.2d 985, 993-94 (7th Cir. 1988); Johnson v. Johnson, 385 F.3d 503, 527 (5th Cir. 2004).

Plaintiff does not know the name of the warden and identifies him as "John Doe." "[W]hen the substance of a pro se civil rights complaint indicates the existence of claims against individual officials not named in the caption of the complaint, the district court must provide the plaintiff with an opportunity to amend the complaint." Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir. 1996); see also Duncan v. Duckworth, 644 F.2d 653, 655-56 (7th Cir. 1981) (if prisoner does not know name of defendant, court may allow him to proceed against administrator for purpose of determining defendants' identity). Early in this lawsuit, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At the time of the conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the unnamed defendant and will set a deadline within which plaintiff is to amend his complaint to name that defendant.

ORDER

IT IS ORDERED that

1. Plaintiff James Jones is GRANTED leave to proceed on his claim that defendants

Jo Anne Skalski, James Grady, Kesha Marson, Hintz, Remmers, Cosbob, Lawler, Johnson, Mulvey and John Doe kept plaintiff incarcerated beyond the date allowed under state law, in violation of the Eighth Amendment.

2. Plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of documents.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

5. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust

fund account until the filing fee has been paid in full.

Entered this 26th day of January, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge